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February 24, 2009

Nate Arave
Senior Water Resource Agent
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Claim No. 31-11982, Filed by the State of Idaho, Department of Lands.

Dear Nate:

We appreciate you sending us a draft recommendation associated with Claim No. 31-11982. We also have retrieved from IDWR's website a letter sent to you by John Marshall, counsel for the Hagenbarth family. As you may recall, Mr. Marshall appeared at the hearing on the Motion to File Late Claim on behalf of the Hagenbarths, and I appeared on behalf of Mud Lake Water Users, Inc. At that hearing, we expressed our concern regarding the late claim.

We have reviewed the letter prepared by Mr. Marshall, and concur with the comments contained therein. Specifically, we would recommend that the water right have a priority date of April 1, 1944. Our concurrence is based upon our desire to resolve this matter through a negotiated settlement. Otherwise, my clients maintain that the water right has not been used for a significant number of years, and likely has been forfeited due to non-use. Nevertheless, we would agree to resolve the matter with the elements contained in your preliminary recommendation, except that the priority date be advanced as we have indicated.

We are providing copies of this letter to Mr. Barber, counsel for the State of Idaho. From the Department of Water Resource's website, we can find no letter from the State with regards to your preliminary recommendation. We therefore invite the State to consider the proposal made by Mr. Marshall, which we have concurred with. We understand that you will be leaving the Department's employ sometime in the month of March, and hope this matter can be resolved before that time. We appreciate your kind attention to this matter, and look forward to hearing from you.

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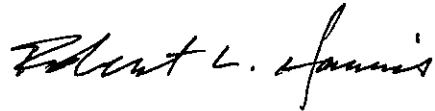
FEB 25 2009

Established in 1896

Department of Water Resources
Eastern Region

Nate Arave
Senior Water Resource Agent
Idaho Department of Water Resources
February 24, 2009
Page 2 of 2

Best Regards,

A handwritten signature in black ink, appearing to read "Robert L. Harris". The signature is fluid and cursive, with the first name "Robert" being more prominent.

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Mud Lake Water Users, Inc.
David Barber
John Marshall

GIVENS PURSLEY LLP

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Gary G. Allen	Steven J. Hippler	Dorothy E. Nelson
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Christopher J. Beeson	Anne C. Kunkel	W. Hugh O'Riordan, LL.M.
Clint R. Bolinder	Jeremy G. Ladle	Angela M. Reed
Erik J. Bolinder	Michael P. Lawrence	Justin A. Steiner
Jeremy C. Chou	Franklin G. Lee	Scott A. Tschirgi, LL.M.
William C. Cole	David R. Lombardi	J. Will Varin
Michael C. Creamer	John M. Marshall	Conley E. Ward
Amber N. Dina	Kenneth R. McClure	Robert B. White
Elizabeth M. Donick	Kelly Greene McConnell	
Kristin Bjorkman Dunn	Cynthia A. Melillo	
Thomas E. Dvorak	Christopher H. Meyer	RETIRED
Jeffrey C. Fereday	L. Edward Miller	Kenneth L. Pursley
Justin C. Fredin	Patrick J. Miller	James A. McClure
Marlin G. Hendrickson	Judson B. Montgomery	Raymond D. Givens (1917-2008)

January 16, 2009

Nate Arave
Sr. Water Resource Agent
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Claim No.: 31-11982
GP File No. 5978-4

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JAN 20 2009

Department of Water Resources
Eastern Region

Dear Nate:

Thank you for sending me your draft preliminary recommendation for the State of Idaho's claim no. 31-11982 and for seeking our comment. We reviewed your draft recommendation in light of the water right decrees the Hagenbarths obtained in Basin 31 when it was adjudicated in the SRBA, including the various settlement agreements we brokered in contested cases. The adjudication of Basin 31 involved many contentious subcases with controversies centered on the effect of the prior decree in the basin. In general terms, the result of the litigation and settlements required subordination of the Hagenbarths' more senior upper basin rights because they were not included in the prior decree. This is true for right 31-10245 and its priority of 9-24-1912.

Your draft recommendation for State of Idaho claim 31-11982 includes a priority date of 9-25-1912. As it currently stands, this recommendation will likely draw objection from the same parties that objected to the recommendations of the Hagenbarths' claims. It certainly would draw objection from the Hagenbarths as it would result in a water right inserted in front of rights 31-2274 and 31-2275 and without the subordination provisions the Hagenbarths' claims 31-10245 and 31-10740 were subject to. To avoid objection from the Hagenbarths, and likely objections by third parties, we would suggest the priority date for claim 31-11982 should be the day

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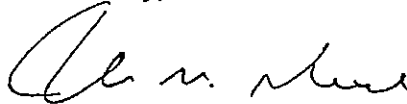
Department of Water Resources
Eastern Region

COPY

Nate Arave
January 16, 2009
Page 2

after Hagenbarths' licensed water rights 31-2274 and 31-2275 that have priorities of 3-31-1944. This would result in a recommended priority for 31-11982 of 4-1-1944. Also, the point of diversion for right 31-11982 should match the decreed point of diversion for right 31-10245, which is located in the NWNWSW of Section 36.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Marshall".

John M. Marshall

JMM:lah

cc: David Barber